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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

15 CR 95 (AJN)

5 NICO BURRELL, et al.,

6 Defendants.

7 -----x
8 New York, N.Y.
9 May 2, 2016
3:00 p.m.

10 Before:

11 HON. ALISON J. NATHAN,

12 District Judge

13
14
15 APPEARANCES

16 PREET BHARARA

17 United States Attorney for the
18 Southern District of New York

RACHEL MAIMIN

19 Assistant United States Attorney

20 JOHN KENNEY

Attorney for Defendant Carletto Allen

21 MITCHELL DINERSTEIN

22 Attorney for Defendant Okeifa John

23 JOHN KALEY

Attorney for Defendants Dominique Bass, Durrell Guy

24 RICHARD JASPER

25 Attorney for Defendant Devante Joseph

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APPEARANCES
(CONTINUED)

MICHAEL SCACHTER

Attorney for Defendants Robert Haughton, Martin Mitchell

ED SAPONE

Attorney for Defendant Dominick Sherland

ERIC SEARS

Attorney for Defendant Ricardo Stewart

JEAN BARRETT

Attorney for Defendant Bradley Wilson

DOMENICK J. PORCO

Attorney for Defendant Kenneth Ruggs

HOWARD TANNER

Attorney for Defendants Tayquan Tucker, Donque Tyrell

BRYAN KONOSKI

Attorney for Defendant Daquan Reid

SAM TALKIN

Attorney for Defendants James Pilgrim, Mark Williams

GRAINNE O'NEILL

Attorney for Defendant Richard Phillips

DAWN CARDI

Attorney for Defendant Calvin Ruggs

SCOTT TULMAN

Attorney for Defendant Hakeem Campbell

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(Case called)

THE COURT: I will take appearances on behalf of the government.

MS. MAIMIN: Good afternoon, your Honor. Rachel Maimin for the government.

THE COURT: Good afternoon, Ms. Maimin.

What I will do with the defendants, as I have done with the prior conferences today, I will state the defendant's name as included on the government's letter for the slotting of defendants in the three different conferences, and I'll ask the defendant, when I state your name, to please rise along with the attorney representing them, and the attorney representing that particular defendant, if you would state your name. I should say, if you're representing the defendant or if you're standing in for counsel for a defendant for today's scheduling conference purposes.

Let me begin with asking who is here on behalf of Carletto Allen.

MR. KENNEY: John Kenney, your Honor.

THE COURT: Carletto Allen, please stand.

Thank you. Good afternoon to you both.

Okeifa John.

MR. DINERSTEIN: Mitchell Dinerstein for Okeifa John, who is the gentleman in the first row in the fourth seat.

THE COURT: Thank you. Good afternoon to you both.

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1 Dominique Bass.

2 MR. KALEY: Good afternoon, your Honor. John Kaley
3 for Mr. Bass.

4 THE COURT: Good afternoon to you both.
5 Durrell Guy.

6 MR. KALEY: Good afternoon, your Honor. John Kaley
7 standing in for Michael Bachrach.

8 THE COURT: Good afternoon.
9 Devante Joseph.

10 MR. JASPER: Good afternoon, your Honor. Richard
11 Jasper for Mr. Joseph.

12 THE COURT: Thank you. Good afternoon.
13 Robert Haughton.

14 MR. SCACHTER: Good afternoon, your Honor. Michael
15 Scachter on behalf of Robert Haughton.

16 THE COURT: All right. Good afternoon.

17 Let me just add, I'll note that we have many people in
18 the courtroom today. We are almost at full capacity. We will
19 accommodate as many people in the room as we can. We also have
20 an overflow courtroom set up on the fourth floor in Room 444,
21 which has the proceedings taking place here. And so if you're
22 not comfortably seated but want to watch the proceedings in the
23 overflow courtroom, you are invited to do so.

24 I do note, we have some young folks here today. And
25 if, because of the need for everybody to hear what is going on,

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1 if someone is crying, I will ask for you to -- if you can't
2 quiet them, I know how challenging it is -- if you can't quiet
3 them, to please go to the overflow courtroom with them so that
4 today's proceedings are not interrupted. But no matter what,
5 you'll be able to listen to the proceedings.

6 We left off at I met Mr. Haughton and his counsel.

7 Dominick Sherland.

8 MR. SAPONE: Good afternoon, your Honor. Edward
9 Sapone for Mr. Sherland.

10 THE COURT: Good afternoon to you both.

11 Ricardo Stewart

12 MR. SEARS: Your Honor, Eric Sears for Mr. Stewart.

13 THE COURT: Good afternoon to you both.

14 Bradley Wilson.

15 MS. BARRETT: Good afternoon, your Honor. Jean
16 Barrett on behalf of Mr. Wilson.

17 THE COURT: Good afternoon to you both.

18 Kenneth Ruggs.

19 MR. PORCO: Good afternoon, your Honor. Domenick
20 Porco for Mr. Ruggs.

21 THE COURT: Good afternoon.

22 Tayquan Tucker.

23 MR. TANNER: Good afternoon, your Honor. Howard
24 Tanner for Tayquan Tucker.

25 THE COURT: Good afternoon to you both.

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Donque Tyrell.

MR. TANNER: Judge, Howard Tanner standing in for
Larry Sheehan on behalf of Donque Tyrell.

THE COURT: Good afternoon to you both.

Daquan Reid.

MR. KONOSKI: Good afternoon, Judge. Appearing on
behalf of the defendant, Bryan Konoski.

THE COURT: Good afternoon to you both.

James Pilgrim.

MR. TALKIN: Good afternoon, your Honor. Sam Talkin
for Mr. Pilgrim.

THE COURT: Good afternoon.

Mark Williams.

MR. TALKIN: Good afternoon. Again, Mr. Sam Talkin
standing in for Bruce Maffio for Mr. Williams.

THE COURT: Good afternoon to you both.

Richard Phillips.

MS. O'NEILL: Grainne O'Neill standing in for Bobbi
Sternheim for Mr. Phillips.

THE COURT: Good afternoon to you both.

Calvin Ruggs.

MS. CARDI: Dawn Cardi, your Honor, for Mr. Calvin
Ruggs.

THE COURT: Good afternoon to you both.

Ms. Maimin, Hakeem Campbell was not on your list, is

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1 that correct?

2 MS. MAIMIN: Yes, your Honor, but I understand that
3 his defense counsel is waiving his presence solely for today's
4 proceeding.

5 THE COURT: Mr. Tulman?

6 MR. TULMAN: Yes, your Honor. Scott Tulman for Hakeem
7 Campbell. I don't know why my client was not produced, but I
8 trust it won't happen again.

9 THE COURT: Certainly you can get the transcript from
10 today's proceeding to discuss with him. But if you desire to
11 come in after discussing it with him for a separate proceeding
12 to do this again, I would be happy to do it.

13 MR. TULMAN: Thank you, Judge.

14 THE COURT: Ms. Maimin, Rai Thomas we did see this
15 morning?

16 MS. MAIMIN: That's correct, your Honor. He was
17 signed up inadvertently for two conferences.

18 THE COURT: He was in the first conference this
19 morning?

20 MS. MAIMIN: Yes.

21 THE COURT: I believe that covers everyone.

22 Let me say to the defendants, my name is Judge Nathan.
23 I am the district court judge who will be handling this case
24 moving forward. As I have partly mentioned in my discussions
25 already, I have had multiple conferences today. This is a

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1 large matter. There are 62 defendants named in the indictment.
2 We don't have a courtroom big enough, so we have done three
3 conferences today with approximately 15 to 20 defendants per
4 conference.

5 I have discussed at the earlier conferences a basic
6 schedule, and I'll explain that schedule and hear from defense
7 counsel today in this conference whether there are any
8 questions from the deviation from the schedule or objections to
9 the schedule that has been discussed so far.

10 I will also, at times, refer to another case in front
11 of one of my colleagues, Judge Kaplan. The case is called
12 United States v. Parrish, et al. And that case, as you may
13 know, involves also a large number of defendants who were
14 arrested on the same day, and the allegations in the
15 indictments are that the two cases involve rival gangs. And
16 the government, in advance of the conferences, submitted a
17 letter proposal suggesting a management process for both cases
18 given the overlap of issues and similarity of timing. That is
19 to say, the two cases are separate, but the proposal with
20 respect to the two cases is the same.

21 I ask defense counsel to consider the scheduling order
22 Judge Kaplan put out following his initial conferences so that
23 we can use that as a point of discussion. I have done that
24 with the prior conferences this morning.

25 As I indicated I would in my order in advance of this

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1 conference, I will ask counsel for the government, again,
2 though we have done it in the prior conferences, of the benefit
3 of the defendants here now and defense counsel, if you would,
4 Ms. Maimin, please summarize the charges in the indictment, as
5 well as the categories of discovery that will be produced, and
6 then we will move to our scheduling discussion.

7 Ms. Maimin.

8 MS. MAIMIN: Certainly, your Honor.

9 The defendants are charged in an indictment that
10 contains four counts. Each defendant is charged with one or
11 more of these counts, all of which arise from the defendants'
12 participation and/or association with the Big Money Bosses
13 street gang.

14 Count One charges a racketeering conspiracy with
15 multiple predicate acts in connection with that racketeering
16 conspiracy, including acts of violence and fraud crimes, as
17 well as narcotics trafficking.

18 Count Two is a narcotics conspiracy relating to the
19 gang's trafficking of narcotics during the charged time period.

20 The third count is a substantive narcotics
21 distribution count that relates to the defendants' possession
22 with intent to distribute or distribution of narcotics within
23 1,000 feet of a playground, school, or public housing
24 development.

25 Count Four is a firearms offense, that is the

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1 discharge of a firearm, or aiding and abetting of the discharge
2 of a firearm, in connection with the narcotics and racketeering
3 conspiracies.

4 There are a number of categories of discovery in this
5 case. I'll address each one in turn.

6 The first is wiretap material. The government
7 intercepted multiple telephones in connection with this
8 investigation, and the government will produce the recordings
9 and associated line sheets for these wiretap recordings. There
10 are hundreds of hours of wiretap recordings in this case,
11 dozens of recordings that the government believes are pertinent
12 at this time. We will also produce, of course, the application
13 materials in connection with those wiretaps.

14 In order to facilitate defense's review of the wiretap
15 material, which is voluminous, to the extent we have already
16 identified a particular defendant on a wiretap, we will provide
17 or identify those particular line sheets and recordings so
18 defense counsel can at least have an initial point of focus.
19 As we identify additional defendants on the wiretap, which we
20 will do, we anticipate, we will then identify those on a
21 rolling basis for counsel.

22 There were a number of controlled purchases of
23 narcotics in this case by confidential informants or undercover
24 police officers. In connection with each of those controlled
25 buys, we will produce any audio or video recording, the buy

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1 report which provides certain information about the
2 transaction, and an invoice of any seized narcotics or other
3 items.

4 A particularly voluminous category of discovery in
5 this case is materials seized or in the process of being seized
6 pursuant to search warrants of defendants' social media
7 accounts, such as Facebook accounts. Each of those accounts
8 can range in the tens of thousands or even hundreds of
9 thousands of pages, but as I previously noted to the court, not
10 each page is pertinent, and to the extent there is some
11 pertinent information on that page, it is usually pretty
12 sparse. It is not necessarily as intimidating as it first
13 appears.

14 We have seized and searched multiple cellular phones
15 even before the arrests in this case, and we are in the process
16 of obtaining search warrants for the many cellular phones that
17 were seized pursuant to the recent arrest of these defendants.
18 We will produce the application materials as well as any
19 reports of the contents of these phones.

20 We have also obtained prison calls and e-mails
21 relating to certain defendants who were already in state or
22 federal custody. We have also obtained police files, that is
23 the so-called homicide files or other files relating to
24 nonfatal acts of violence that we have presently identified as
25 acts of violence, we may seek to prove in connection with any

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1 trial of the charged racketeering conspiracy. To the extent we
2 have those in our possession, we will produce any Rule 16
3 material contained in those files, and we will continue, as we
4 obtain additional files, to produce that material on a rolling
5 basis.

6 We have obtained voluminous pen register and GO
7 location information for many of the defendants in this case.
8 There was some colloquy in the last conference about the
9 feasibility of producing that location information to defense
10 counsel, as opposed to what we customarily do, which is have it
11 available for review by defense counsel at our office or law
12 enforcement. I am still in the process, as the court directed,
13 of determining whether we can produce it to defense counsel.
14 And as your Honor directed, I will update the court
15 accordingly.

16 We searched multiple residences in this case both on
17 the date of the recent takedown and before. We will produce
18 any application materials and invoices of seized evidence. Of
19 course, defense counsel is also welcome to inspect any physical
20 evidence during the course of this case.

21 Finally, your Honor, there will be individual
22 discovery for each defendant, namely, their rap sheet and
23 associated arrest reports and the marshal's intake form for
24 each defendant.

25 THE COURT: Thank you, Ms. Maimin.

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1 What we discussed, with agreement from counsel at the
2 prior conferences, was that the government would produce what
3 you just described that is in its possession within 30 days.
4 And as we will talk about in a moment, that's hopefully with
5 the assistance of a coordinating discovery attorney. But
6 either way, I am setting a 30-day -- I presume to be setting a
7 30-day deadline for the production of the discovery, and to the
8 extent the government obtains additional Rule 16 discovery
9 materials on an ongoing basis.

10 MS. MAIMIN: Yes, Judge.

11 THE COURT: Let me direct to defense counsel now. I
12 have indicated in the prior conferences that I have assumed and
13 that has been confirmed in the earlier conferences that there
14 would be a desire to have a coordinating discovery attorney
15 appointed. As it turns out, the three that exist under
16 contract with the AAO, none of them are available. Jerry Tryst
17 is working to identify other individuals who can potentially be
18 brought in for the task. That's in the process, but not
19 confirmed yet.

20 In Judge Kaplan's case, Andy Patel and Jesse Siegel
21 have volunteered to be point persons on behalf of the defense
22 to try to work with Mr. Tryst to identify other individuals.
23 And in my morning conference in this case, Judith Vargas also
24 volunteered for the task.

25 My first question is to just make sure I am correct in

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1 my assumption that if someone suitable can be found, that that
2 is of interest to defense counsel, is there any objection to,
3 assuming someone appropriate can be identified, proceeding with
4 a coordinating discovery attorney?

5 None indicated.

6 Hopefully there will be an update from the folks who
7 have volunteered to serve as a point person on that and Jerry
8 Tryst soon. But as I have indicated, for purposes of our
9 scheduling deadline, I am setting 30 days from today as the
10 government's deadline one way or the other for the production
11 of the Rule 16 material that's been discussed.

12 We also discussed at the prior conferences the need to
13 facilitate access to discovery material by the incarcerated
14 defendants. In Judge Kaplan's case, some concern had been
15 expressed about such a large number of defendants needing
16 simultaneous access to devices to review electronic material.
17 The government has indicated it is working with or it will work
18 with the prison facilities to come up with a proposal to
19 facilitate this process. Ms. Maimin has indicated that I will
20 hear by letter within ten days as to a proposal in that regard.

21 Correct, Ms. Maimin?

22 MS. MAIMIN: Yes, your Honor.

23 THE COURT: Any concerns with the 30-day schedule that
24 I have put in place?

25 Yes, counsel.

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1 MS. BARRETT: Your Honor, Jean Barrett. I have been
2 told to talk into a microphone.

3 THE COURT: It helps.

4 MS. BARRETT: I am reaching.

5 THE COURT: Thank you. Go ahead, Ms. Barrett.

6 MS. BARRETT: Jean Barrett for Bradley Wilson, your
7 Honor.

8 I have a number of questions for the matter of
9 disclosure of the discovery. First of all, my question would
10 be to the government as to whether or not we are going to be
11 complying with the electronic discovery guidelines in that the
12 discovery as produced will be produced with consecutive Bates
13 numbers on them, where the Bates numbers are not repeated, and
14 that the documents will be identified in a manner so that they
15 are in an index accompanying them. That's the first issue that
16 I wanted to raise about the discovery, and perhaps the
17 government can address that.

18 THE COURT: Let me get the other issues.

19 MS. BARRETT: In addition to that, your Honor, in my
20 review of the letter, the government discussed the categories
21 of discovery, there were a number of areas where there was a
22 modification of the 30-day rule in that it would be rolling
23 discovery.

24 I am not clear as to what is going to roll and what is
25 going to not roll. I would assume that all of the affidavits

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1 and applications for search warrants, etc., would be available
2 already, since those things are not, and that that would be
3 included.

4 Also, I am assuming that the line sheets are going to
5 be available, but I am not clear as to whether or not we will
6 have those line sheets identified by defendant by the time the
7 30 days is expired.

8 In addition to that, are the social media reports
9 going to be identified in a similar way as the line sheets are,
10 in that if what is attributable to an individual defendant, as
11 opposed to having counsel spends hours and hours and hours
12 trying to wade through people's personal social media accounts
13 to no avail.

14 And again, the contents of the cellular phones, it
15 says that the government will produce the application materials
16 and reports of the contents on the phones on a rolling basis.
17 I am assuming the application materials, at least all of those
18 where the applications have already been obtained, that all of
19 that material would be provided.

20 I just wanted to make sure that that was clarified for
21 the record.

22 THE COURT: Thank you.

23 Ms. Maimin, beginning with the question regarding the
24 organization and production of materials, continuous Bates, and
25 non-repetition and indexing?

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1 MS. MAIMIN: Yes, your Honor. We plan to do that.

2 THE COURT: I think the second question went to
3 identifying individuals, as I think you indicated that you
4 would do, and I assume in the line sheets, that you would do
5 that within the 30-day period?

6 MS. MAIMIN: That's correct. For all the ones we have
7 identified at that time, but to the extent we identify
8 additional people after the deadline, we will continue advising
9 counsel that we have done so.

10 THE COURT: Well, just spell that out a little bit
11 more. What are they going to get within 30 days?

12 MS. MAIMIN: Certainly, your Honor.

13 THE COURT: What are the line sheets going to look
14 like?

15 MS. MAIMIN: We are going to produce the entire
16 universe of wiretaps and line sheets to everybody. To the
17 extent, by that time, we already have identified particular
18 defendants' voices on the wiretaps, and there are a number of
19 them that we have already identified, we will separately
20 produce only those line sheets that are relevant to that
21 defendant so that those can be quickly reviewed by defense
22 counsel.

23 As in cases of this magnitude and this nature, we
24 expect even after the 30 days to identify additional defendants
25 on the wiretap that we hadn't previously identified their

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1 voices. As soon as we have done so, we will promptly notify
2 defense counsel and provide a similar subset of the line sheets
3 for those defendants.

4 THE COURT: The Facebook, the social media
5 individualized identification.

6 MS. MAIMIN: Yes.

7 There are a number of social media accounts that we
8 haven't yet linked to a particular person but we know are gang
9 related. Obviously those we won't provide a particular name
10 for, but to the extent we know it is the Facebook account of a
11 particular defendant, we will identify it as such.

12 THE COURT: Counsel, did that address your questions?

13 MS. BARRETT: In part.

14 The question, following up on the social media issue,
15 it is my understanding that what the government has said is
16 they'll identify whose social media account it is. That
17 doesn't help us when we are faced with the possibility of using
18 someone else's social media account as coconspirator evidence,
19 where there may be discussions of our clients. And I believe
20 that it makes more sense or it makes sense to additionally
21 notify counsel, where discussions are relevant to individual
22 clients.

23 We could have a discussion under the coconspirator
24 rule where you have the discussion of two other people talking
25 about a third person and the lawyer for the third person

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1 wouldn't have that information.

2 THE COURT: Articulate what your specific request
3 would be to the government and we will see if that is a
4 request.

5 MS. BARRETT: I believe that the material that would
6 be relevant for counsel to review in the social media accounts
7 of other people, things that were relevant to my client. Just
8 let me make a concrete example.

9 If two of the codefendants are having a conversation
10 about narcotics dealing that mentions my client and that
11 conversation is relevant and admissible or arguably the
12 government wants to admit it against our client eventually down
13 the road, I would like to know that that particular
14 conversation exists. It is going to be relevant to my
15 determination of what evidence I am going to be able to discuss
16 with my client. If there is a plea offer, I would want to have
17 that information.

18 THE COURT: I'll ask again, if I understand the
19 example, but if you could articulate what it is that you're
20 asking the government to do, and then we will see if it is
21 feasible.

22 MS. BARRETT: That it would not be limited to the
23 accounts of the individuals, but there would be identification
24 of material within those accounts that's relevant to people
25 whose accounts they are not.

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1 THE COURT: So you want any information identified in
2 the Facebook, in the social media sites, that is relevant to
3 your client?

4 MS. BARRETT: Exactly.

5 THE COURT: You're not talking about specific
6 references to your client or anything like that?

7 MS. BARRETT: I am talking about references to my
8 client, yes, your Honor.

9 THE COURT: So not relevance as the standard, but any
10 specific reference to your client?

11 MS. BARRETT: I don't think anybody can make the
12 determination of the overall absolute relevance of something
13 until it gets down the line, but I certainly would like to know
14 where there are references to my client in somebody else's
15 social media account.

16 THE COURT: As I understand, Ms. Maimin, what's the
17 government's reaction to identifying not only defendant by
18 defendant their accounts, the materials that is contained in
19 their accounts, but also references to those defendants in
20 other people's accounts?

21 MS. MAIMIN: Your Honor, I think that is a step beyond
22 what is appropriate and what we are prepared to do here. We
23 are identifying particular accounts. We are happy to talk with
24 defense counsel about the evidence against them generally, but
25 it would not be feasible or required for us to do what is being

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1 asked right now.

2 That being said, we are happy in advance of any
3 hearing or trial, just as we usually do with wiretap evidence,
4 to identify further in advance of trial the universe of social
5 media evidence we could seek to introduce against that
6 defendant. Not necessarily exclusive, but the best we have
7 early, more advanced of trial than usually we would for
8 exhibits.

9 It sounds like the defense counsel is asking for sort
10 of a preview of potential exhibits at trial. That's not an
11 appropriate thing to have happen at this juncture in the case.

12 THE COURT: All right. That strikes me as right, what
13 obviously all the material would be produced to the extent
14 that, I suppose, one possibility is the searchability of the
15 material for names, references to names, and if there is
16 something I presume that a coordinating discovery attorney can
17 assist with, if it is feasible.

18 To the extent the request is to go beyond the
19 production of the material and the specific identifying of what
20 accounts pertain to which defendants, I do agree, I am not sure
21 it is feasible at this stage, and I don't believe it is
22 required. That's my conclusion on that.

23 You'll continue to work on the issue, obviously, to
24 see if there is some pinpointing feasibly of a request, and
25 I'll encourage Ms. Maimin to take a hard look at that and see

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1 if it can be met. If there is some fundamental disagreement
2 that you believe defendants are entitled to, you can submit an
3 application to me, Ms. Barrett.

4 MS. BARRETT: Yes, your Honor.

5 In addition to that, the court raises the supplement,
6 reminded me with regard to searchability, and that is that the
7 ESI discovery agreements provide that the information be turned
8 over to us in a searchable form. I guess I would request that
9 the court order that compliance with the ESI discovery
10 agreement as well.

11 THE COURT: Ms. Maimin, what's your understanding of
12 the searchability of the material?

13 MS. MAIMIN: PDFs are searchable. The line sheets or
14 PDFs. I don't have a copy of what is being referenced as an
15 agreement right now. I can't go to that directly. But I am
16 happy to work with defense counsel and talk to them and talk to
17 the discovery coordinator who is really responsible for a lot
18 of the segregation of discovery by a defendant, should one be
19 appointed in this case, to work with them to make the discovery
20 as easy to review as possible.

21 MS. BARRETT: Your Honor, I have worked with discovery
22 attorneys before, and this is why I am bringing this stuff up
23 now. I have worked with discovery attorneys before. Some of
24 them ensure that as to PDFs being searchable, they have to be
25 OCR, and that is what this provides.

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1 I'll give my copy to Ms. Maimin so that she can have
2 it.

3 THE COURT: Again, I appreciate it. Given the
4 logistics of what we are dealing with, I am going to encourage
5 as much effort as can be made feasibly to ease access to the
6 materials and allow searchability, again, whether there is a
7 coordinating discovery attorney or not.

8 To the extent you have a specific application that you
9 believe you're entitled to something that you're not getting,
10 put in an application and let me know within a reasonable
11 amount of time.

12 MS. BARRETT: Certainly, your Honor. Thank you.

13 THE COURT: I wrote a third point down, but I think I
14 covered all of it.

15 MS. BARRETT: I guess there was the cell phone
16 information and whether or not the applications for the phones
17 were going to be or the contents were going to be produced on a
18 rolling basis.

19 I think we clarified that the cell phone applications
20 that exist already are going to be provided within the 30 days
21 and then the contents are going to be another issue.

22 The other issue with regard to the cell phones is also
23 the cell site data that was discussed earlier, and I guess we
24 are going to have to let that shake out as it goes along.

25 THE COURT: Ms. Maimin, yes?

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1 MS. MAIMIN: Yes.

2 THE COURT: Yes to both.

3 So yes, search warrant applications that currently
4 exist will be produced within the next 30 days?

5 MS. MAIMIN: Yes, your Honor, as well as any reports
6 of contents that already exist.

7 THE COURT: And any reports of contents that exist
8 within the next 30 days?

9 Access to the cell site data, there is no question, I
10 don't think, there is no dispute as to entitlement to it, it is
11 just the technology question of whether it can be either
12 transferred to defense counsel or made available remotely to
13 defense counsel in some way.

14 So those are the questions I'll hear back from the
15 government within ten days.

16 I guess I think you also asked what, therefore, is
17 rolling as opposed to what would be turned over in the 30 days.

18 Do you want to just repeat on that point, Ms. Maimin?

19 MS. MAIMIN: The only things that will be rolling are
20 the things we don't have at that point. We will produce them
21 promptly as we obtain them.

22 THE COURT: Thank you.

23 Other questions and concerns with the discovery plan
24 for the next 30 days?

25 MS. BARRETT: Just with regard to the access of our

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1 clients to the discovery, which is obviously always an issue.
2 Just to highlight a couple of things that I have had experience
3 with in the past.

4 County jail facilities in some jurisdictions are
5 willing to allow clients have restricted laptop computers.
6 Basically, the only purpose those computers have is for the
7 discovery in the case. It is my experience that the Bureau of
8 Prisons is resistant to this, but as I am sure every attorney
9 at these tables and chairs will tell you, the electronic
10 equipment supplied by the Bureau of Prisons is inadequate for
11 the purposes of this.

12 THE COURT: Ms. Barrett, I have raised this issue at
13 every conference with the government. They are going to report
14 back in ten days. If you would be willing to serve as a
15 defense coordinator on the issue, provide suggestions to the
16 government, and hopefully perhaps even work together for a
17 joint proposal that I'll get in ten days --

18 MS. BARRETT: Sure.

19 THE COURT: -- and make it as useful as possible. To
20 the extent there is disagreements, submit your separate
21 proposal as, and I'll do what I can.

22 MS. BARRETT: Sure, Judge.

23 THE COURT: Thank you.

24 Other concerns or issues?

25 Moving then to our next scheduling matter. As many of

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1 you know, my standard practice is to schedule a motion schedule
2 and trial date at the initial conference. The government's
3 letter proposal suggesting an approach to this case has
4 encouraged a different approach, and usually I get many
5 complaints as to my standard approach, but I'll hear from you.

6 To state it briefly, the government proposes
7 scheduling a conference five months from now, and in advance of
8 that conference, they would submit a severance motion that
9 seeks severance of the case into two groups. The first group
10 are those defendants for whom the government anticipates no
11 superseding charges. And with respect to that group, we would
12 come together in five months, and we would schedule motions and
13 trial date or dates depending on how many defendants are in
14 that group and remain in that group and anticipate going to
15 trial.

16 With respect to those defendants that the government
17 seeks or it anticipates a superseding indictment and
18 superseding charges and, as has been indicated, anticipates
19 seeking superseding charges that carry potential capital
20 charges, that group of defendants --

21 I will ask that everyone do remain quiet so that
22 everyone can hear both in the courtroom, as well as the court
23 reporter. The cross talk is making it difficult. So everyone
24 will remain quiet unless addressed by me. Thank you.

25 With respect to those who face potential superseding

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1 charges, including potentially capital charges, that group of
2 defendants would return for a conference in a year's time for
3 the setting of motions and trial dates.

4 Have I stated the basic approach proposed, Ms. Maimin?

5 MS. MAIMIN: Yes, your Honor.

6 THE COURT: Any concerns or objections with that basic
7 approach?

8 Let me say the one caveat that I'll address in a
9 moment is that there is one category of motions that would go
10 to the face of the indictment that I believe we could schedule
11 immediately. Otherwise, that's the plan.

12 Counsel.

13 MR. TALKIN: The biggest concern, we have individuals
14 facing capital punishment, the death penalty. We are not going
15 to have counsel, learned counsel, assigned for a year.

16 THE COURT: No, that's incorrect.

17 The proposal we have discussed is that the government
18 will give informal notice on September 27 as to all defendants
19 on whether they may or do not face potential capital charges.

20 MR. KONOSKI: At that point you'll assign?

21 THE COURT: At that point, applications can be made
22 for the appointment of learned counsel, as well as confirming
23 whether lead counsel at this point is on the capital panel, on
24 the capital list; if not, if there is a request for
25 substitution of counsel at that point.

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1 But the proposal that we have discussed is that, at
2 the time that the government files its severance motion, it
3 would also do the following, as I just said, it would inform
4 defense counsel of whether their defendant faces the
5 possibility of superseding with capital charges. And also at
6 that time, the government will provide enterprise letters.

7 As early as September 27, we will be in a position,
8 unless there is an application to do so sooner, for
9 applications for appointment of learned counsel.

10 MR. TALKIN: I understand the logistics and the
11 reality of the situation, but even four months, that's a long
12 time if you have a client facing the death penalty, not to get
13 to mitigation. Sometimes the people in mitigation need --

14 THE COURT: Let me say, in the last conference, two
15 counsel who had a basis for requesting earlier appointment of
16 learned counsel I did invite to submit, to confer with Jerry
17 Tryst, to confer with the government -- well, at least to
18 confer with Jerry Tryst and put in an application at an earlier
19 stage.

20 MR. TALKIN: That makes sense. Thank you.

21 MS. BARRETT: Your Honor, may I, with regard to that,
22 just say that the way counsel has been assigned in this case
23 has made every person on the capital panel of this jurisdiction
24 conflicted.

25 THE COURT: I am fully aware of the number of lawyers

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1 engaged in this case. And David Patton, the federal defender,
2 is in the process of working on ascertaining out-of-district
3 learned counsel and capital counsel.

4 MS. BARRETT: But we are not going to -- I mean, if
5 the court were to decide that someone -- that the first
6 attorney appointed on the case should be from the capital
7 panel, and the person who was on the case isn't from the
8 capital panel, there is no option for that substitution either.

9 THE COURT: Say that again.

10 Let me say my understanding. If we get to the point
11 where there are capital charges, that person has an existing
12 counsel.

13 MS. BARRETT: Right.

14 THE COURT: If that person is on the capital panel,
15 good, and learned counsel will be appointed. If that person is
16 not on the capital panel, then there will be a discussion in an
17 allocution conference to figure out whether they want to stay
18 with that person or have capital panel lawyer from in district
19 or out of district appointed and learned counsel will be
20 appointed.

21 MS. BARRETT: Yes, your Honor.

22 It is just, the other question that I have is, how do
23 we know now that we have a reason that our client is within the
24 target area if we have, for instance, no arrest or we don't
25 have a gun charge or something like that?

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1 THE COURT: Everyone will know in five months. If you
2 have some basis for coming for an application sooner, I'd be
3 happy to hear it.

4 MS. BARRETT: Thank you.

5 THE COURT: Ms. Maimin, anything you want to address
6 with respect to those questions?

7 MS. MAIMIN: No, I think the court covered it.

8 THE COURT: Yes, counsel.

9 MR. DINERSTEIN: Mitchell Dinerstein. I represent
10 Okeifa John.

11 I come at this from a somewhat different place. My
12 client is, as I think many of them, not charged in the
13 racketeering conspiracy charge, they're charged with the
14 narcotics conspiracy. It is unlikely that they are going to be
15 looking at capital offenses down the road.

16 In fact, it is more likely that they are kind of
17 peripheral players. The narcotics conspiracy does seem to be
18 separate from the racketeering conspiracy in the sense that the
19 large gang is not a member of the narcotics conspiracy.

20 My concern is that I would apparently have to wait
21 five months to make a bail application for my client when he is
22 only charged with narcotics, and I think, your Honor, that is
23 somewhat unfair.

24 THE COURT: Why do you have to wait five months to
25 make a bail application?

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1 MR. DINERSTEIN: I can't make a bail application, I
2 don't know enough about the charges. I need the government to
3 say to me, that's right, your client is charged with seven acts
4 of selling narcotics, he is not on these tapes, he is not on
5 the wires, he is not on -- you know, he is peripherally
6 involved in this offense, but because he is lumped together
7 with, what is it, 62 other people, 61 other people, he is kind
8 of going along for the ride. I don't think that is fair.

9 I think the government has an obligation to try to
10 ferret out the people only charged with the narcotics
11 conspiracy and not the racketeering conspiracy. They have
12 decided to prosecute this case with what I see as kind of a
13 standby indictment charging large conspiracies when some of the
14 individuals aren't even charged with the main conspiracy.

15 I think, your Honor, that we need to get more
16 information up front from the government as to the individuals
17 who are more peripherally involved.

18 THE COURT: Again, if you can articulate some specific
19 application that you're making. You can certainly bring a bail
20 application, if there hasn't been one made and you have one to
21 make, bring it to the magistrate judge in the first instance
22 and me for appeal.

23 But what I have to do now is set a deadline of 30 days
24 by which discovery is going to be produced, and we are adding
25 to that with dates for producing more information.

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1 If you have some application of something else that
2 you're looking for within a time period that can feasibly be
3 met, I am happy to hear it and see and help decide whether it
4 is feasible or not, but who is a more peripheral standard
5 doesn't sound workable.

6 MR. DINERSTEIN: Well, I understand it is hard to make
7 it workable under the chemistry of these circumstances, but I
8 do believe that the defendants who are more at the bottom of
9 this, that the government has an obligation to inform us of
10 that so that we can and to see whether or not they would either
11 consent to bail or whether we can entertain bail through the
12 magistrate.

13 THE COURT: There have been bail applications made in
14 the case.

15 Go ahead, Ms. Maimin.

16 MS. MAIMIN: Bail is an individualized determination.
17 Defense counsel obviously, as court just mentioned, are free to
18 make bail application and we will provide to counsel and the
19 court any pertinent information that would assist the court in
20 that determination.

21 We are also producing discovery in 30 days which, even
22 in a regular case, is a lot. Our door is always open to talk
23 to counsel about our current view of a particular defendant as
24 to their role in the conspiracy.

25 THE COURT: Thank you.

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1 Again, if you have a bail application, there have been
2 bail applications in the case, so I think that at least
3 initiating a conversation with the government on consent or
4 package terms will be a starting point for getting information
5 that you need.

6 In any event, all Rule 16 discovery will be produced
7 within 30 days.

8 It is true, any bail determination will be
9 individualized. Simply referring to the indictment won't do
10 it. There has to be information as to the individual
11 defendant.

12 Other concerns with the overall approach?

13 Let me just state the timeline for each of the pieces
14 that we have talked about, and you let me know if there are
15 concerns.

16 I set October 20, 2016, as the five-month conference,
17 10:00 a.m. as a start time. If we need multiple conferences,
18 we will stagger again at noon and two. We may not.

19 October 20, 2016 is the next conference. In advance
20 of that conference, the government's severance motion that we
21 have discussed would be filed on or before September 27, 2016,
22 with any oppositions due October 11, 2016, and any replies due
23 October 17, 2016. So that would allow us to break into the
24 anticipated two groups of those for whom no superseding charges
25 are anticipated. Those are the folks at the five-month

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1 conference for whom I would set a motion schedule and trial
2 date.

3 As I have also said, also on September 27, 2016, the
4 government will provide letters to defense counsel indicating
5 informally whether their clients face potential superseding
6 charges, including the possibility of any capital charges,
7 which can then trigger application for learned counsel that we
8 have discussed.

9 Then, also on September 27, the government would
10 provide and would file enterprise letters.

11 Ms. Maimin, if you would, for the benefit of the
12 defendants, just briefly describe what you anticipate including
13 in the enterprise letter.

14 MS. MAIMIN: An enterprise letter is a letter to the
15 court and defense counsel listing the government's
16 understanding at that time of the acts of violence it would
17 prove at any trial of the charged racketeering conspiracy. It
18 will provide the who, what, when, and where for each act of
19 violence, to put the defendants on notice that we will be
20 proving those acts up in any trial direct to the conspiracy.

21 THE COURT: Thank you.

22 Again, September 27 date for those.

23 Then the last schedule that I set, I think, just
24 pertains to a category of initial motions. This was not part
25 of the government's original proposal, but something Judge

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1 Kaplan adopted, and I have raised it with agreement in the
2 earlier conferences. That's that any motion that can be
3 brought on the face of the indictment, and specifically motions
4 under Federal Rule of Criminal Procedure 12(b)(3), (b)(1), (ii,
5 (iii), or (v), so duplicity, multicity, lack of specificity,
6 and failure to state an offense, those motions, again, which
7 could be brought on the face of the indictment would be brought
8 and briefed sooner on the theory that any such lurking issues
9 should be fleshed out because they would presumably continue in
10 any superseding indictment.

11 So we don't need to wait for those. The schedule I
12 discussed was any such motions in that category would be filed
13 on or before July 1, 2016, any oppositions due August 1, 2016,
14 and any replies due September 1, 2016.

15 With that overall statement of the schedule, a second
16 conference, severance motion, and the other dates in these
17 initial motions, any concerns with that schedule?

18 Nothing indicated.

19 One counsel at an earlier conference indicated some
20 question as to whether the motions that I just discussed, the
21 earlier motions, might require more information for filing. He
22 suggested the possibility of needing the enterprise letters,
23 for example. I had trouble understanding how a motion that is
24 on the face of the indictment and not precluding any future
25 motions that are not simply on the face of the indictment, what

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1 might fall into that category. I gave a week for the filing of
2 any letter raising concerns in that regard.

3 I think I have covered all of the schedule that I have
4 set thus far in the case.

5 MS. MAIMIN, anything further?

6 MS. MAIMIN: That covers it, your Honor.

7 THE COURT: Any other requests from counsel regarding
8 scheduling issues?

9 MR. KONOSKI: Judge, not particularly related to
10 scheduling, slightly off topic. I can wait a moment once the
11 scheduling issues are done.

12 THE COURT: I think we are finished with scheduling.

13 Go ahead.

14 MS. CARDI: Dawn Cardi. If we want to schedule a bail
15 hearing, should we get in touch with the magistrate?

16 THE COURT: For initial bail hearings, get in touch
17 with the magistrate.

18 MR. KONOSKI: That actually was my question. I spoke
19 to prosecution, I spoke to the deputy, I already explained the
20 issues to my client.

21 For the client's benefit, your Honor, are you hearing
22 any bail applications today or must they work with the
23 magistrate?

24 THE COURT: I am not. Given the volume, initial
25 applications are through the magistrate judge for all. I have

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1 heard no bail applications. All initial bail applications are
2 to the magistrate judge.

3 MR. KONOSKI: Thank you, Judge.

4 THE COURT: Thank you.

5 MS. WALSH: Mark Scachter, also not on scheduling.

6 Your Honor, Mr. Haughton has been told that he is not
7 able to see a medical professional because of the separation
8 order that is in place. It is vital that he receive medication
9 he has been on for the last two years.

10 Your Honor, we ask that the Bureau of Prisons be
11 directed to provide Mr. Haughton access to a medical provider.

12 THE COURT: For this, and if there are any similar,
13 I'll just say, first step is Ms. Maimin for contact with the
14 prison and see if it can get done. If it can't, submit a
15 proposed order to me by ECF, and I'll act on it quickly.

16 MS. WALSH: Thank you.

17 THE COURT: Any other scheduling issues or other
18 application from counsel?

19 Ms. Maimin?

20 MS. MAIMIN: We would just renew our request for the
21 court to exclude time pursuant to the Speedy Trial Act between
22 today and October 20, should the court set that date for the
23 next conference, in order to afford the government the
24 opportunity to produce discovery, for the defense to review
25 discovery, for the defense to prepare any potential motions,

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1 prepare for trial, discuss any potential dispositions of the
2 case, and also, as the court had earlier pointed out, because
3 this is a complex case under the statute.

4 THE COURT: Any objections?

5 ALL PRESENT: No objection.

6 THE COURT: As I have in the other conferences, I am
7 going to set in stone the final schedule that we discussed by
8 order after the conference, but I anticipate concluding there
9 that the ends of justice served by granting an exclusion from
10 speedy trial computations from today's date through October 20,
11 2016, which I have set as a next conference date, outweigh the
12 interest of the public and the defendants in a speedy trial, as
13 this time is necessary to allow the government to produce
14 discovery, counsel to review discovery, consider and prepare
15 any available motions, preparing for trial, as well as to
16 consider any negotiations toward a pretrial resolution of the
17 case.

18 And I also anticipate finding, under Section
19 3161(h)(7), that this case is so unusual and complex due to the
20 number of defendants, the nature and scope of the prosecution,
21 and the volume of discovery, that it would be unreasonable to
22 expect adequate preparation for pretrial proceedings and for
23 trial within the time limits established by the Speedy Trial
24 Act.

25 With that, counsel, is there anything else I can

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1 address at this time?

2 MS. MAIMIN: Not from the government. Thank you.

3 THE COURT: Thank you. We are adjourned.

4 (Adjourned)